Supreme Court, U. S.
FILED
AUG 26 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 73, Original

STATE OF CALIFORNIA,

Plaintiff,

v.

STATE OF NEVADA,

Defendant.

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IN THE SUPREME COURT OF THE

UNITED STATES

OCTOBER TERM, 1976

NO. 73, Original

STATE OF CALIFORNIA,

Plaintiff,

v.

STATE OF NEVADA,

Defendant.

ANSWER

COMES NOW, the State of Nevada and by and through its Attorney General, Robert List, answers the complaint of the State of California in this original action as follows:

I.

The State of Nevada admits Paragraph I of the complaint.

II.

In answer to Paragraph II of the complaint, the State of Nevada admits that the description of the boundary of the State of California was in 1849 as set forth in the complaint. However, the State of Nevada denies that the description of the boundary of the State of California is presently described as set forth in Paragraph II of the complaint. The State of Nevada further

denies that Exhibit 1 is an accurate representation of the placement of the boundary described in Paragraph II of the complaint and demands strict proof thereof.

III.

In answer to Paragraph III of the complaint, the State of Nevada admits that she was admitted to this Union of United States by Act of Congress and Presidential Proclamation as stated in Paragraph III of the complaint. The State of Nevada further admits that the language of Article Fourteen, Section 1 of the Nevada Constitution which is quoted in Paragraph III of the complaint is contained in said Article Fourteen, Section 1 of the Nevada Constitution. However, the State of Nevada denies that the language quoted in Paragraph III of the complaint is complete and alleges that the entire description of Nevada's boundaries is as follows:

> The boundary of the State of Nevada shall be as follows: Commencing at a point formed by the intersection of the thirty eighth degree of Longitude West from Washington with the Thirty Seventh degree of North latitude; Thence due West along said thirty seventh degree of North latitude to the eastern boundary line of the State of California; thence in a North Westerly direction along said Eastern boundary line of the State of California to the forty third degree of Longitude West from Washington; Thence North along said forty third degree of West Longitude, and said Eastern boundary line of the

State of California to the forty second degree of North Latitude; Thence due East along the said forty second degree of North Latitude to a point formed by its intersection with the aforesaid thirty eighth degree of Longitude west from Washington; Thence due South down said thirty eighth degree of West Longitude to the place of beginning. And whensoever Congress shall authorize the addition to the Territory or State of Nevada of any portion of the territory on the Easterly border of the foregoing defined limits, not exceeding in extent one degree of Longitude, the same shall thereupon be embraced within, and become a part of this State. And furthermore Provided, that all such territory, lying West of and adjoining the boundary line herein prescribed, which the State of California may relinquish to the Territory or State of Nevada, shall thereupon be embraced within and constitute a part of this state. Nevada Constitution, Article Fourteen, Section 1.

IV.

The State of Nevada admits all portions of Paragraph IV of the complaint with the exception of the statement that the Territory of Nevada in 1863 agreed to survey and post the 120th Meridian as the boundary between the two states. The State of Nevada specifically alleges that even if the survey was described in

terms of the 120th Meridian, such descriptions were used and agreed upon only as a result of a mistake of fact resulting from the belief that the 43rd degree west of Washington was the same as the 120th degree west of Greenwich.

V.

In answer to Paragraph V of the complaint, the State of Nevada admits that the "Houghton-Ives" line was adopted by the California legislature in 1864 as the eastern boundary of the State of California and the said line was reenacted in 1943 by the California legislature. Nevada alleges that the People of California as recently as November 7, 1972, adopted the 1863 boundary line by amending their Constitution fixing California's boundary to be as described in the 1849 Constitution except "as modified pursuant to statute." The State of Nevada denies that the State of California observed the "Houghton-Ives" line from 1864 to 1872 based upon lack of information and belief and demands strict proof thereof.

VI.

In answer to Paragraph VI of the complaint, the State of Nevada admits that the "Houghton-Ives" line was adopted by the State of Nevada in 1865 as the legal western boundary of Nevada. However, the State of Nevada points out that the correct citation of such adoption is Statutes of Nevada 1864 - 1865, Ch. 31, pp. 133-134, 379. The State of Nevada admits that said line was observed by the State of Nevada from 1865 to 1872.

VII.

In answer to Paragraph VII of the complaint, the State of Nevada admits that in 1872 the United States Government through its general land office entered into a contract with one Allexey W. Von Schmidt. However, the State of Nevada denies that the purpose of the referenced contract was to survey, post and monument the 120th Meridian between the 42nd and 39th degrees of north latitude and alleges that the purpose was rather to survey, post and monument the then existing boundary between the states of California and Nevada. The State of Nevada specifically alleges that if the purpose of the contract between the United States and Allexey W. Von Schmidt was other than to survey, post and monument the then existing boundary between the States of California and Nevada the contract was an illegal and ultra vires contract and any action taken pursuant thereto was without legal efficacy. The State of Nevada admits that a line known as the "Von Schmidt" line was surveyed, posted and monumented. The State of Nevada further admits that the "Von Schmidt" line varies in location from the "Houghton-Ives" line. However, the State of Nevada denies that the variation is from 3000 to 6000 feet as alleged in Paragraph VII of the complaint for lack of information and belief and demands strict proof thereof. The State of Nevada admits that since 1873 both states have exercised and continue to exercise political jurisdiction and sovereignty up to the "Von Schmidt" line as presently marked on the ground. The State of Nevada denies that the "Von Schmidt" line constitutes the lawful boundary between the states by acquiescence.

VIII.

In answer to Paragraph VIII of the complaint, the State of Nevada admits that a controversy exists between the states of California and Nevada as alleged in Paragraph VIII of the complaint. However, the State of Nevada lacks sufficient information and belief to form an answer as to the exact width of the area in dispute and therefore denies that said area is approximately 3000 feet wide at the north end of Lake Tahoe and increases to 6000 feet wide and demands strict proof thereof.

IX.

In answer to Paragraph IX of the complaint, the State of Nevada admits that the State of California has exercised jurisdiction to the "Von Schmidt" line as presently marked on the ground since 1873. The State of Nevada denies that the State of California has now or in the past obtained dominion in the lands in question. The State of Nevada further denies she has acquiesced in California's exercise of sovereignty and jurisdiction or that California has obtained title to the land in question.

X.

The State of Nevada admits the majority of Paragraph X of the complaint. However, the State of Nevada takes exception to Exhibit 2 referenced in Paragraph X in that Paragraph X, in the words of the complaint, indicates "the location of various lines". The State of Nevada alleges that only two lines are in contention, those being the "Houghton-Ives" line and the "Von Schmidt" line. The State of Nevada has attached as Exhibit A to her answer a

map showing a portion of the area in dispute at North Lake Tahoe.

XI.

The State of Nevada does not construe Paragraph XI of the complaint as requiring an answer. However, to the extent that an answer should be required, the State of Nevada denies the allegations set forth in Paragraph XI and demands strict proof thereof.

WHEREFORE, defendant prays:

1. That the Court enter a decree adjudging the eastern boundary of California between the 39th and 42nd degrees north latitude to be the "Houghton-Ives" line;

2. That a decree be entered adjudging that the State of California has no right, title or interest to any lands between the "Houghton-Ives" line and the "Von Schmidt" line and perpetually enjoining the State of California from asserting any rights to said land or any part thereof or from interfering with the possession of the State of Nevada therein;

3. That the State of Nevada be awarded costs of suit and attorneys' fees; and

4. For such other and further relief as the Court may deem appropriate.

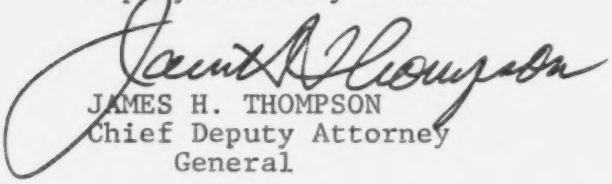
DATED this 17th day of August, 1977.

Respectfully submitted,

ROBERT F. LIST
Attorney General of
Nevada

MICHAEL W. DYER
Deputy Attorney General

HARRY W. SWAINSTON
Deputy Attorney General



JAMES H. THOMPSON
Chief Deputy Attorney
General

Counsel for State of
Nevada

CERTIFICATE OF SERVICE

I, JAMES H. THOMPSON, Chief Deputy Attorney General of Nevada, hereby certify that on the 24th day of August, 1977, I mailed by first class mail, postage prepaid, three copies to each of the following:

Edmund G. Brown, Jr.
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State Capitol Building
Sacramento, California 95814

Evelle J. Younger
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555 Capitol Mall, Suite 550
Sacramento, California 95814

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Chief Deputy Attorney General

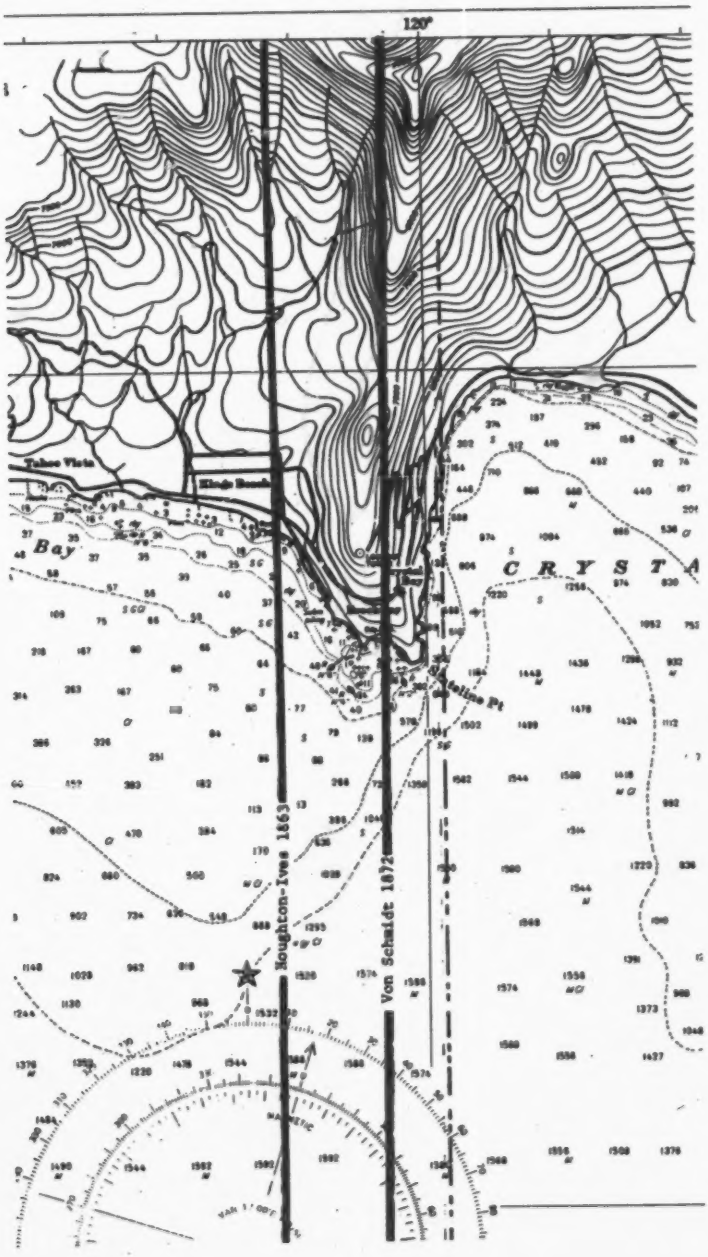


EXHIBIT "A" TO ANSWER